

Internal Revenue Service (I.R.S.)

Private Letter Ruling

Issue: June 26, 1998
March 20, 1998

Section 7871--Indian Tribal Governments Treated As States For Certain Purposes
7871.00-00 Indian Tribal Governments Treated As States For Certain Purposes
7871.03-00 Tax Exempt Bonds

CC: DOM:FI&P: 3 / PLR-253556-96

LEGEND:

Tribe =

Taxpayer =

State =

Taxpayer Project =

This is in response to a letter dated November 29, 1996, and subsequent correspondence requesting a ruling that Taxpayer is either a political subdivision or an integral part of the Tribe and that Taxpayer may issue bonds under [§ 7871\(c\) of the Internal Revenue Code](#), the interest on which is exempt from Federal income tax under [§ 103 of the Internal Revenue Code](#).

FACTS

The Tribe established the Taxpayer as a non-profit corporation under the laws of State. Taxpayer has received a determination letter from the Internal Revenue Service that its income is exempt from Federal income taxation under [section 501\(a\) of the Internal Revenue Code](#) as an organization described in [section 501\(c\)\(3\)](#). It also has received an equivalent state taxation ruling.

Taxpayer was created as part of the Tribe's attempt to provide nursing home and other medical care for Tribe members, particularly elderly members. Taxpayer currently is responsible for a health center, an emergency medical services building, and a nursing home, all of which are located on the Tribe's reservation.

The Board of Taxpayer is appointed by the Tribal Council and may be removed by the Tribal Council at any time with or without cause. The paperwork for several Federal grants and loans indicate that the monies are being given either to the Tribe or to the principal chief of the Tribe for the Taxpayer Project.

Taxpayer now wishes to expand and would like to issue tax-exempt bonds to finance the additions.

LAW

Under [section 7871\(a\)\(4\)](#), an Indian tribal government is treated as a state for purpose of [section 103](#), subject to the limitations of [section 7871\(c\)](#). [Section 7871\(c\)](#) of the Code permits an Indian tribal government or a subdivision thereof to issue tax-exempt bonds under [section 103](#) of the Code only if the issuer meets the requirements of [section 103](#) and substantially all of the proceeds are used in the exercise of any essential governmental function. [Section 7871\(e\)](#) states that "essential governmental function" does not include any function that is not customarily performed

by state and local governments with general taxing powers.

[Section 103\(a\)](#) provides that gross income does not include any interest on any state or local bond. [Section 103\(c\)](#) defines "state or local bond" as an obligation of a state or political subdivision of a state. [Section 7871\(d\)](#) provides that a subdivision of an Indian tribal government will be treated as a political subdivision of a state only if the Secretary of the Treasury determines (after consultation with the Secretary of the Interior) that the subdivision has been delegated the right to exercise one or more the substantial governmental functions of the Indian tribal government. Thus, bonds issued under [sections 7871\(a\)\(4\) and \(c\)](#) must be issued by an Indian tribal government, a political subdivision of the Indian tribal government, or an integral part of the Indian tribal government.

Neither the Code nor the Income Tax Regulations specifically defines the term "substantial governmental function" as used in [section 7871\(d\)](#) of the Code. [Rev. Proc. 84-37, 1984-1 C.B. 513](#), provides that a subdivision of an Indian tribal government may qualify as a political subdivision within the meaning of [section 7871\(d\)](#) of the Code if it has been delegated one or more of the generally accepted sovereign powers. The sovereign powers include the police power, the power to tax, and the power of eminent domain. See [Commissioner v. Estate of Shamberg, 3 T.C. 131 \(1944\)](#), acq., 1945 C.B. 6, aff'd, [144 F.2d 998 \(2d Cir.1944\)](#), cert. denied, [323 U.S. 792 \(1945\)](#). Although it is not necessary that all three powers be delegated, the possession of only an insubstantial amount of any or all of the sovereign powers is insufficient. To reach a conclusion, all the facts and circumstances must be taken into consideration, including the public purpose of the entity. [Rev. Rul. 77-164, 1977-1 C.B. 20](#).

[Revenue Ruling 94-16, 1994-1 C.B. 19](#), discusses three different situations concerning income earned by an Indian tribe or an entity owned by an Indian tribe. The revenue ruling holds that in the situation where an entity is incorporated under the laws of a state, the entity is deemed to be separate from the Indian tribe and does not share the same tax status as the Indian tribe. The entity is therefore not an integral part of the Indian tribe.

ANALYSIS

No information has been provided that suggests that the Tribe has delegated to Taxpayer any sovereign powers of the Tribe. The Taxpayer is therefore not a political subdivision of the Tribe.

Further, the Taxpayer is not an integral part of the Tribe. The Taxpayer is incorporated under the laws of State and therefore falls within the holding of [Rev. Rul. 94-16](#). Because the Taxpayer is neither a political subdivision of the Tribe or an integral part of the Tribe, the Taxpayer does not meet the first requirement of [section 7871\(c\)](#).

CONCLUSION

Based on the information and representations submitted by the Tribe and the Taxpayer, the Taxpayer is not eligible to issue bonds under [section 7871\(c\)](#). Because the Taxpayer does not meet the first requirement of [section 7871\(c\)](#), we do not address whether the activities of the Taxpayer meet the definition of essential governmental function under [section 7871\(e\)](#).

This ruling is directed only to the taxpayer that requested it. Section 6110(j)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter should be attached to the next income tax return filed for the Company.

Sincerely yours,

Assistant Chief Counsel
(Financial Institutions and Products)

By:

Alice M. Bennett
Chief, Branch 3
enclosures:
copy of this letter
section 6110 copy

This document may not be used or cited as precedent. [Section 6110\(j\)\(3\) of the Internal Revenue Code](#).

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